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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**  
10

11 MILAGROS R. SURATOS, )

12 Petitioner, )

13 vs. )

14 SHERYL FOSTER, *et al.*, )

15 Respondents. )  
16

2:10-cv-01010-PMP-NJK

**ORDER**

17 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254,  
18 by a Nevada state prisoner. This matter comes before the Court on the merits of the petition.

19 **I. Procedural History**

20 On April 18, 2007, the State charged petitioner with exploitation of an older person and  
21 neglect of an older person causing substantial bodily harm. (Exhibit 2).<sup>1</sup> The case proceeded to a  
22 jury trial, and petitioner was convicted of both charges on November 20, 2008. (Exhibit 69). The  
23 judgment of conviction was filed on January 21, 2009. (Exhibit 74). Petitioner was sentenced to a  
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25 <sup>1</sup> The exhibits referenced in this order are found in the Court's record at ECF Nos. 10-13.  
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1 term of 24 to 96 months imprisonment on Count I, and 24 to 60 months imprisonment on Count II,  
2 with the terms running concurrently. (*Id.*). Petitioner was further ordered to pay restitution in the  
3 amount of \$22,000.00. (*Id.*).

4 Petitioner appealed her conviction to the Nevada Supreme Court. (Exhibit 80). On May 7,  
5 2010, the Nevada Supreme Court affirmed the conviction and denied petitioner's direct appeal on the  
6 merits. (Exhibit 109). Petitioner did not file a state habeas petition. On June 24, 2010, this Court  
7 received petitioner's federal habeas petition. (ECF No. 1). Respondents filed an answer. (ECF No.  
8 9). Although petitioner was granted the opportunity to do so, petitioner did not file a reply to the  
9 answer. (*See* ECF No. 4, at p. 2).

## 10 **II. Federal Habeas Corpus Standards**

11 The Antiterrorism and Effective Death Penalty Act ("AEDPA"), at 28 U.S.C. § 2254(d),  
12 provides the legal standard for the Court's consideration of this habeas petition:

13 An application for a writ of habeas corpus on behalf of a person in  
14 custody pursuant to the judgment of a State court shall not be granted  
with respect to any claim that was adjudicated on the merits in State  
15 court proceedings unless the adjudication of the claim –

16 (1) resulted in a decision that was contrary to, or involved an  
unreasonable application of, clearly established Federal law, as  
17 determined by the Supreme Court of the United States; or

18 (2) resulted in a decision that was based on an unreasonable  
determination of the facts in light of the evidence presented in the State  
19 court proceeding.

20 The AEDPA "modified a federal habeas court's role in reviewing state prisoner applications  
21 in order to prevent federal habeas 'retrials' and to ensure that state-court convictions are given effect  
22 to the extent possible under law." *Bell v. Cone*, 535 U.S. 685, 693-694 (2002). A state court  
23 decision is contrary to clearly established Supreme Court precedent, within the meaning of 28 U.S.C.  
24 § 2254, "if the state court applies a rule that contradicts the governing law set forth in [the Supreme  
25 Court's] cases" or "if the state court confronts a set of facts that are materially indistinguishable from  
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1 a decision of [the Supreme Court] and nevertheless arrives at a result different from [the Supreme  
2 Court's] precedent." *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003) (quoting *Williams v. Taylor*, 529  
3 U.S. 362, 405-406 (2000) and citing *Bell v. Cone*, 535 U.S. 685, 694 (2002)). The formidable  
4 standard set forth in section 2254(d) reflects the view that habeas corpus is "'a guard against extreme  
5 malfunctions in the state criminal justice systems,' not a substitute for ordinary error correction  
6 through appeal." *Harrington v. Richter*, 562 U.S. \_\_\_, \_\_\_, 131 S.Ct. 770, 786 (2011) (quoting  
7 *Jackson v. Virginia*, 443 U.S. 307, 332 n.5 (1979)).

8 A state court decision is an unreasonable application of clearly established Supreme Court  
9 precedent, within the meaning of 28 U.S.C. § 2254(d), "if the state court identifies the correct  
10 governing legal principle from [the Supreme Court's] decisions but unreasonably applies that  
11 principle to the facts of the prisoner's case." *Lockyer v. Andrade*, 538 U.S. at 75 (quoting *Williams*,  
12 529 U.S. at 413). The "unreasonable application" clause requires the state court decision to be more  
13 than merely incorrect or erroneous; the state court's application of clearly established federal law  
14 must be objectively unreasonable. *Id.* (quoting *Williams*, 529 U.S. at 409). In determining whether a  
15 state court decision is contrary to, or an unreasonable application of federal law, this Court looks to  
16 the state courts' last reasoned decision. *See Ylst v. Nunnemaker*, 501 U.S. 797, 803-04 (1991);  
17 *Shackleford v. Hubbard*, 234 F.3d 1072, 1079 n.2 (9<sup>th</sup> Cir. 2000), *cert. denied*, 534 U.S. 944 (2001).

18 In a federal habeas proceeding, "a determination of a factual issue made by a State court shall  
19 be presumed to be correct," and the petitioner "shall have the burden of rebutting the presumption of  
20 correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1). If a claim has been  
21 adjudicated on the merits by a state court, a federal habeas petitioner must overcome the burden set  
22 in § 2254(d) and (e) on the record that was before the state court. *Cullen v. Pinholster*, 131 S.Ct.  
23 1388, 1400 (2011).

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### 1 III. Discussion

#### 2 A. Ground One

3 Petitioner asserts that the state district court erred in failing to dismiss potential juror #12 for  
 4 cause, thus violating her due process rights. Petitioner's contention lacks merit because she has  
 5 failed to rebut the state court's presumptively correct finding that the challenged juror could serve  
 6 fairly and impartially. *See* 28 U.S.C. 2254(e)(1); *Greene v. Georgia*, 519 U.S. 145, 146 (per curium)  
 7 ("federal courts must accord a presumption of correctness to state courts' finding of juror bias."). In  
 8 addressing this claim, the Nevada Supreme Court ruled as follows:

9 Appellant Milagros R. Suratos claims that the district court erred in  
 10 denying her challenge to a member of the venire for cause. The  
 11 decision whether to remove a prospective juror for cause lies within  
 12 the broad discretion of the district court. *Weber v. State*, 121 Nev.  
 13 554, 580, 119 P.3d 107, 125 (2005). We conclude that the district  
 14 court did not err because the prospective juror did not express an  
 15 opinion regarding the merits of the case and was able to confidently  
 16 state that, despite her sympathy for vulnerable seniors, she could be a  
 17 fair and impartial juror and her sympathy would not influence her  
 18 verdict. *See id.* at 581, 119 P.3d at 125 (discussing that it would not  
 19 be error to deny challenge when prospective juror relinquishes  
 20 previous statement at odds with duty as impartial juror).

21 (Exhibit 109, at p. 1). The factual findings of the state court are presumed correct. 28 U.S.C.  
 22 § 2254(e)(1). Petitioner has failed to meet the burden of proving that the Nevada Supreme Court's  
 23 ruling was contrary to, or involved an unreasonable application of, clearly established federal law, as  
 24 determined by the United States Supreme Court, or that the ruling was based on an unreasonable  
 25 determination of the facts in light of the evidence presented in the state court proceeding. Habeas  
 26 relief on Ground One of the federal petition is denied.

#### 21 B. Ground Two

22 Petitioner asserts that the State was estopped from charging her with exploitation in light of  
 23 the findings of the probate court, in violation of her due process rights. Petitioner does not identify  
 24 which findings of the probate court she believes were binding on the State and she fails to provide  
 25 any documentation of the probate proceedings. The record reveals that the probate court did not  
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1 make any factual findings regarding the victim's competency, the validity of the victim's will, or any  
 2 other matter related to petitioner's criminal case. (Exhibit 61, at p. 69 (no factual findings made at  
 3 competency hearing); Exhibit 63, at pp. 129, 134 (no factual findings made regarding the validity of  
 4 the victim's will in the probate settlement).

5 Even if the probate court had made factual findings, the doctrine of collateral estoppel is not  
 6 applicable where, as here, one of the parties in the present litigation was not a party in the former  
 7 litigation. *Wilson v. Belleque*, 554 F.3d 816, 830 (9<sup>th</sup> Cir. 2009) ("Collateral estoppel, or issue  
 8 preclusion, 'means simply that when an issue of ultimate fact has once been determined by a valid  
 9 and final judgment that issue cannot be litigated *between the same parties* in any future lawsuit.'" (citation omitted) (emphasis added). Respondents were not parties to the matter litigated in the  
 10 probate court, thus the doctrine of collateral estoppel is not applicable in this case. The Nevada  
 11 Supreme Court rejected petitioner's claim as follows:  
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13 Suratos claims that the doctrine of collateral estoppel precluded the  
 14 State from pursuing the exploitation charge. This claim lacks merit  
 15 because no issues of fact or law were litigated and determined by the  
 16 probate court that approved the settlement of the will contest brought  
 17 by the victim's heirs. See *Yates v. United States*, 354 U.S. 298, 335  
 18 (1957) (confirming that doctrine, if applicable, may bar subsequent  
 criminal case even when prior proceedings were civil), overruled on  
other grounds by *Burks v. United States*, 437 U.S. 1, 18 (1978); see also  
*Five Star Capital Corp. v. Ruby*, 124 Nev. \_\_\_, \_\_\_, 194 P.3d 709, 713  
 (2008) (explaining the four factors necessary for issue preclusion to  
 apply).

19 (Exhibit 109, at p. 2). The factual findings of the state court are presumed correct. 28 U.S.C.  
 20 § 2254(e)(1). Petitioner has failed to meet the burden of proving that the Nevada Supreme Court's  
 21 ruling was contrary to, or involved an unreasonable application of, clearly established federal law, as  
 22 determined by the United States Supreme Court, or that the ruling was based on an unreasonable  
 23 determination of the facts in light of the evidence presented in the state court proceeding. Habeas  
 24 relief is denied on Ground Two of the federal petition.

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1           **C. Grounds Three and Four**

2           In Grounds Three and Four, petitioner asserts that there was insufficient evidence presented  
3 at trial to support the convictions of neglect causing substantial bodily harm of an older person and  
4 exploitation of an older person.

5           When a habeas petitioner challenges the sufficiency of evidence to support his conviction, the  
6 court reviews the record to determine “whether, after viewing the evidence in the light most  
7 favorable to the prosecution, any rational trier of fact could have found the essential elements of the  
8 crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Jones v. Wood*,  
9 207 F.3d 557, 563 (9th Cir. 2000). The *Jackson* standard does not focus on whether a correct guilt or  
10 innocence determination was made, but whether the jury made a rational decision to convict or  
11 acquit. *Herrera v. Collins*, 506 U.S. 390, 402 (1993). Under the *Jackson* standard, the prosecution  
12 has no obligation to rule out every hypothesis except guilt. *Wright v. West*, 505 U.S. 277, 296 (1992)  
13 (plurality opinion); *Jackson*, 443 U.S. at 326; *Schell*, 218 F.3d at 1023. *Jackson* presents “a high  
14 standard” to habeas petitioners claiming insufficiency of the evidence. *Jones v. Wood*, 207 F.3d 557,  
15 563 (9th Cir. 2000).

16           Sufficiency claims are limited to a review of the record evidence submitted at trial. *Herrera*,  
17 506 U.S. at 402. Such claims are judged by the elements defined by state law. *Jackson*, 443 U.S. at  
18 324, n.16). The reviewing court must respect the exclusive province of the fact-finder to determine  
19 the credibility of witnesses, to resolve evidentiary conflicts, and to draw reasonable inferences from  
20 proven facts. *United States v. Hubbard*, 96 F.3d 1223, 1226 (9<sup>th</sup> Cir. 1996). The district court must  
21 assume the trier of fact resolved any evidentiary conflicts in favor of the prosecution, even if the  
22 determination does not appear on the record, and must defer to that resolution. *Jackson*, 443, U.S. at  
23 326. The United States Supreme Court has recently held that “the only question under *Jackson* is  
24 whether [the jury’s] finding was so insupportable as to fall below the threshold of bare rationality.”  
25 *Coleman v. Johnson*, 132 S.Ct. 2060, 2065, \_\_\_ U.S. \_\_\_ (per curium) (2012).

1           Regarding the crime of neglect of an older person causing substantial bodily harm, the  
2 elements of the crime are: (1) the failure to provide services necessary to maintain the physical or  
3 mental health, (2) of an older person 60 years of age or older, (3) by a person who has assumed a  
4 legal or contractual obligation to care for the older person, (4) resulting in substantial bodily harm to  
5 the older person. *See* NRS 200.5092(4); NRS 200.5099(2). The evidence presented at trial included  
6 testimony establishing the following: Petitioner's and the victim's longtime friend Jerry Bruan  
7 signed a contract to care for the victim. (Exhibit 63, at pp. 166, 168). The victim was over 80 years  
8 old during the relevant time period. (Exhibit 64, at p. 80). Petitioner administered excessive doses  
9 of an unprescribed blood thinner to the victim. (Exhibit 54, at pp. 149, 157-58). Petitioner gave the  
10 victim 8 ounces of vodka a day, despite the victim's history of alcohol abstention. (Exhibit 54, at p.  
11 153; Exhibit 61, at pp. 149-50). The victim was found with a marijuana derivative in his system  
12 while under petitioner's care. (Exhibit 54, at p. 212). Petitioner was informed that the victim was a  
13 suicide risk. (Exhibit 61, at pp. 185-86). Petitioner failed to secure the victim's sleeping medication,  
14 permitting him to attempt suicide. (Exhibit 64, at p. 42). Petitioner's neglectful actions resulted in  
15 substantial bodily harm to the victim. (Exhibit 54, at p. 158) (victim had risk of spontaneous  
16 bleeding and heart attack due to blood thinner); Exhibit 54, at p. 168 (victim's bruising following a  
17 fall was accelerated by blood thinner); Exhibit 55, at p. 100 (victim in "critical and unstable"  
18 condition when admitted to the hospital after his fall); Exhibit 54, at p. 207 (victim faced risk of  
19 death due to sleeping pill overdose); Exhibit 64, at pp. 42-44 (explaining that petitioner's neglect  
20 resulted in substantial bodily harm to the victim). The record shows that sufficient evidence was  
21 presented at trial for a rational trier of fact to find petitioner guilty beyond a reasonable doubt of the  
22 crime of neglect of an older person causing substantial bodily harm.

23           The elements of a category B felony crime of exploitation of an older person are: (1)  
24 converting or obtaining control through deception, intimidation, or undue influence, (2) money,  
25 assets, or property, (3) with a value of \$5,000.00 or more, (4) of an older person 60 years of age or  
26

1 older, (5) with the intent to permanently deprive the older person of ownership, use, benefit, or  
 2 possession of the property, (6) by a person who has the trust and confidence of the older person.  
 3 NRS 200.5092(2); NRS 200.5099(3)(c). The evidence presented at trial included testimony  
 4 establishing the following: The victim was over 80 years old during the relevant period (Exhibit 64,  
 5 at p. 80). Petitioner gained the trust and confidence of the victim. (Exhibit 61, at pp. 226-27).  
 6 Petitioner told the victim that mutual acquaintance Jerry Braun was trying to take the victim's money  
 7 and send him to a nursing home. (Exhibit 61, at p. 239). Petitioner threatened to send the victim  
 8 back to a nursing home. (Exhibit 58, at p. 16; Exhibit 63, at p. 169). The victim was dependent on  
 9 petitioner and petitioner manipulated the victim to her advantage. (Exhibit 61, at p. 226). Petitioner  
 10 opened a joint bank account with the victim. (Exhibit 55, at p. 202). Petitioner withdrew over  
 11 \$6,200.00 of the victim's money from the joint account. (Exhibit 55, at p. 211). Petitioner removed  
 12 gold coins and other valuables from the victim's residence. (Exhibit 63, at p. 199). Petitioner used  
 13 secrecy, fear, and isolation to financially exploit the victim. (Exhibit 64, at pp. 35-41). The record  
 14 shows that sufficient evidence was presented at trial for a rational trier of fact to find petitioner guilty  
 15 beyond a reasonable doubt of the category B felony of exploitation of an older person.

16 Moreover, in rejecting petitioner's claims of insufficiency of the evidence, the Nevada  
 17 Supreme Court ruled:

18 Suratos claims that insufficient evidence was adduced at trial to  
 19 support the convictions. When reviewing the sufficiency of the  
 20 evidence, we determine "whether, after viewing the evidence in the  
 21 light most favorable to the prosecution, *any* rational trier of fact could  
 22 have found the essential elements of the crime beyond a reasonable  
 23 doubt." Rose v. State, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007)  
 24 (internal quotation marks omitted). The jury was presented with  
 25 evidence that Suratos (1) intentionally administered the 88-year-old  
 26 victim excessive doses of narcotics, an unprescribed blood thinner, and  
 alcoholic spirits, (2) knowingly failed to secure the depressed victim's  
 medications, enabling him to access them and attempt suicide, (3)  
 waited over 12 hours before obtaining medical care for the victim after  
 he suffered a fall that fractured his pelvis, caused severe bruising, and  
 was accompanied by gastrointestinal bleeding, (4) gained the trust and  
 confidence of the victim, (5) exploited his fears of going to a nursing  
 home, (6) took control over all of the victim's assets within a short



period of time after taking over his care, and (7) withdrew over \$7,000.00 from the victim's account for her own purposes. The jury was also presented evidence that the victim suffered substantial bodily harm as a result of Suratos' actions. We conclude that a rational juror could have found, beyond a reasonable doubt, that Suratos committed neglect of an older person causing substantial bodily harm, see NRS 200.5092(4); NRS 200.5099(2), (7), and exploitation of an older person, see NRS 200.5092(2); 200.5099(3)(c). It is for the jury to determine the weight and credibility to give conflicting testimony, Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981), and we decline Suratos' invitation to depart from our precedent on this issue by conducting an independent evaluation of the evidence to resolve conflicting evidence differently from the jury. The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdicts. See id.; see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

(Exhibit 109, at pp. 2-3). The factual findings of the state court are presumed correct. 28 U.S.C. § 2254(e)(1). Petitioner has failed to meet the burden of proving that the Nevada Supreme Court's ruling was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court, or that the ruling was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. This Court denies habeas relief on Grounds Three and Four of the federal petition.

#### **D. Ground Five**

Petitioner asserts that the state district court erred in refusing five jury instructions proposed by the defense, in violation of due process.

To obtain federal habeas relief based on an improper jury instruction, petitioner must establish that the instruction so infected the entire trial that the resulting conviction violates due process. *Masoner v. Thurman*, 996 P.3d 1003, 1006 (9<sup>th</sup> Cir. 1993); *Estelle v. McGuire*, 502 U.S. 62, 72 (1991); *Henderson v. Kibbe*, 431 U.S. 145, 154 (1977). Demonstrating that an erroneous instruction was so prejudicial that it will support a collateral attack on the Constitutional validity of a state court's judgment requires the court to determine "whether the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process," not whether the instruction is "undesirable, erroneous, or even universally condemned." *Henderson v. Kibbe*, 431 U.S. at 154

(citations omitted); *Estelle v. McGuire*, 502 U.S. 62, 72 (1991). In reviewing jury instructions, the court inquires as to whether the instructions as a whole are misleading or inadequate to guide the jury's deliberation. *U.S. v. Garcia-Rivera*, 353 F.3d 788, 791 (9<sup>th</sup> Cir. 2003) (citing *United States v. Frega*, 179 F.3d 793, 806 n.16 (9<sup>th</sup> Cir. 1999) (internal citations omitted). The question is whether an instruction so infected the entire trial that the resulting conviction violated due process. *Estelle*, 502 U.S. at 72. An instruction may not be judged in isolation, "but must be considered in the context of the instructions as a whole and the trial record." *Id.* Furthermore, jurors are presumed to follow the instructions that they are given. *U.S. v. Olano*, 507 U.S. 725, 740 (1993).

In the instant case, petitioner has failed to provide this Court with the proposed instructions, or show that the proposed instructions were warranted by law. Petitioner has not explained how the proposed instructions were related to the defense theory presented at trial. Petitioner has not explained how or established that she was prejudiced by the omission of the proffered jury instructions. Petitioner has not shown that the omission of the proposed jury instructions had a substantial and injurious effect in determining the jury's verdict, and has not shown that the omission of the instructions so infected the entire trial that the resulting conviction violates due process. In addressing this claim, the Nevada Supreme Court ruled as follows:

We conclude that the district court did not err in refusing to give Suratos proposed jury instructions on administrative violations, superceding cause, and collateral estoppel because they misstated the applicable law or were not supported by the evidence. See *Vallery v. State*, 118 Nev. 357, 373-74, 46 P.3d 66, 77-78(2002) (holding that defendant in elder abuse case was not entitled to instruction erroneously stating that violation of regulations is not a criminal act, or to instruction superceding cause when evidence showed conduct at issue was, at most, a concurrent, contributing cause); *Carter v. State*, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005) (district court need not accept misleading, inaccurate or duplicitous jury instructions); see also *Adler v. State*, 95 Nev. 339, 346, 594 P.2d 725, 730 (1979) (holding that defendant was not entitled to theory instruction that was not a defense to the crime).

The district court refused both the State's and Suratos' proffered instructions defining undue influence because there is no Nevada authority defining the term as it relates to the elder abuse statutes and

the term is used in ordinary language. See NRS 175.161(2), (3) (providing that district court instructs the jury as it “thinks necessary” and must refuse instructions that are not pertinent). We note that the term undue influence was partially defined in an instruction to the jury and the definition proffered by Suratos would not have provided a complete theory of defense because undue influence was only one theory under which the jury could have found exploitation. See NRS 200.5092(2)(a); see also Adler, 95 Nev. at 346, 594 P.3d at 730 (upholding district courts refusal of instruction because, in part, the theory was not a complete defense). Therefore, we conclude that the district court did not abuse its broad discretion or commit judicial error in refusing this instruction.

Finally, we conclude that the district court erred by refusing Suratos’ proposed instruction defining “reasonable cause to believe.” See NRS 200.50925(1). However, we conclude that the error did not contribute to the jury’s verdict and therefore the error was harmless and no relief is warranted. See Crawford v. State, 121 Nev. 744, 756, 121 P.3d 582, 590 (2005).

(Exhibit 109, at pp. 3-5). The factual findings of the state court are presumed correct. 28 U.S.C. § 2254(e)(1). Petitioner has failed to meet the burden of proving that the Nevada Supreme Court’s ruling was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court, or that the ruling was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. Habeas relief is denied as to Ground Five of the federal petition.

#### **IV. Certificate of Appealability**

In order to proceed with his appeal, petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9<sup>th</sup> Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9<sup>th</sup> Cir. 2006); *see also* *United States v. Mikels*, 236 F.3d 550, 551-52 (9<sup>th</sup> Cir. 2001). District courts are required to rule on the certificate of appealability in the order disposing of a proceeding adversely to the petitioner or movant, rather than waiting for a notice of appeal and request for certificate of appealability to be filed. Rule 11(a) of the Rules Governing Section 2254 and 2255 Cases. Generally, a petitioner must make “a substantial showing of the denial of a constitutional right” to warrant a certificate of appealability. 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S.

1 473, 483-84 (2000). “The petitioner must demonstrate that reasonable jurists would find the district  
2 court's assessment of the constitutional claims debatable or wrong.” *Id.* (quoting *Slack*, 529 U.S. at  
3 484). In order to meet this threshold inquiry, the petitioner has the burden of demonstrating that the  
4 issues are debatable among jurists of reason; that a court could resolve the issues differently; or that  
5 the questions are adequate to deserve encouragement to proceed further. *Id.* In this case, no  
6 reasonable jurist would find this Court’s denial of the petition debatable or wrong. The Court  
7 therefore denies petitioner a certificate of appealability.


8 **V. Conclusion**

9 **IT IS THEREFORE ORDERED** that the petition for a writ of habeas corpus is **DENIED**  
10 **IN ITS ENTIRETY.**

11 **IT IS FURTHER ORDERED** that petitioner is **DENIED A CERTIFICATE OF**  
12 **APPEALABILITY.**

13 **IT IS FURTHER ORDERED** that the Clerk **SHALL ENTER JUDGMENT**  
14 **ACCORDINGLY.**

15 Dated this \_ 12th day of July, 2013.

16   
17 UNITED STATES DISTRICT JUDGE